

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

WP(C).No. 30142 of 2007(L)

PETITIONER:

SMT.VIJAYALAKSHMI S.,
HIGH SCHOOL ASSISTANT (MATHS),
GOVERNMENT HIGH SCHOOL, PERINADU,
CHEMMAKKADU P.O., KOLLAM DISTRICT.

BY ADV. SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.
 2. THE DEPUTY DIRECTOR OF EDUCATION,
KOLLAM.
 3. THE HEADMISTRESS, GOVERNMENT HIGH
SCHOOL, CHEMMAKKADU P.O., PERINADU,
KOLLAM DISTRICT.
 4. SMT.SOBHANAKUMARI.C.
HIGH SCHOOL ASSISTANT (MATHS),
GOVERNMENT HIGH SCHOOL,
CHEMMAKADU P.O., PERINADU, KOLLAM DISTRICT.

BY ADV. SRI.N.SUGATHAN
SMT.VARSHA BHASKAR
SRI.S.PRASANTH (AYYAPPANKAVU)
GOVERNMENT PLEADER SMT. M.R. SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1: TRUE COPY OF THE CERTIFICATE ISSUED TO THE PETITIONER BY THE JUNIOR RED CROSS REVENUE DISTRICT COMMITTEE, KOLLAM.
- EXT.P2: COPY OF THE CIRCULAR DT 25.9.2006 ISSUED BY THE DISTRICT EDUCATIONAL OFFICER, KOLLAM.
- EXT.P3: COPY OF THE CERTIFICATE ISSUED BY THE DISTRICT PRESIDENT OF THE JUNIOR RED CROSS, KOLLAM.
- EXT.P4: COPY OF THE ORDER BEARING NO.GO(MS)NO.579/95/GEN. EDN. DATED 6.12.1995.
- EXT.P5: COPY OF THE COMMUNICATION NO.O & M 5-52431/07/DPI/K. DIS. DATED 18.8.2007 ISSUED BY THE PUBLIC INFORMATION OFFICER.
- EXT.P6: COPY OF THE CERTIFICATE ISSUED TO THE 8TH STANDARD STUDENTS BY THE JUNIOR RED CROSS SOCIETY.
- EXT.P7: COPY OF THE COMPLAINT MADE BY THE PETITIONER ON 25.9.2007 BEFORE THE DISTRICT COLLECTOR, KOLLAM.
- EXT.P8: COPY OF THE COMPLAINT DTD 5.10.2007 MADE BY THE PETITIONER BEFORE THE DISTRICT COLLECTOR.
- EXT.P9: COPY OF THE ORDER DATED 27.9.2007 PASSED BY THE DEPUTY DIRECTOR OF EDUCATION, KOLLAM.
- EXT.P10: COPY OF THE ORDER NO.A1-17129/07 DTD 8.10.2007 ISSUED BY THE 2ND RESPONDENT.
- EXT.P11: COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ON 6.10.2007.
- EXT.P12: COPY OF THE REQUEST DTD 19.10.2007.
- EXT.P13: COPY OF THE REPLY DTD 24.10.2007.
- EXT.P14: COPY OF THE MINUTES OF THE JRC MEETING HELD ON 31.10.2006.

RESPONDENT'S EXHIBITS

- EXT.R4(A): COPY OF STAFF FIXATION ORDER NO.A6-5224/07/D.D.IS.DTD 15.7.2007.
- EXT.R4(B): COPY OF ORDER NO.A1-4714/94 DTD 7.9.1994.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)No.30142 OF 2007

Dated this the 13th day of November, 2007

JUDGMENT

The petitioner is an HSA in Mathematics in the Government High School, Perinadu since 2004. She is aggrieved by Ext.P10 order whereby she has been transferred to Government High School, Chithara. The petitioner's contention is that the petitioner being a junior Red Cross Counsellor under the Junior Red Cross Society, managing a Junior Red Cross Unit in the Government School, Perinadu she is entitled to immunity from transfer by virtue of Ext.P4 Government Order. The petitioner, therefore, submits that the petitioner cannot be transferred and accordingly seeks quashing of Ext.P10 order to the extent the same transfers the petitioner to Chithara.

2. The 2nd respondent – Deputy Director of Education has filed a counter affidavit, in which the contention of the petitioner is disputed. According to the Deputy Director of Education, the transfer of the petitioner by Ext.P10 order was necessitated, as is evident from Ext.P10 itself, on account of teachers having been

rendered surplus due to reduction in post for the year 2007-2008. According to the 2nd respondent, Ext.P4 is applicable only to cases of transfers simpliciter and not to transfers necessitated on account of teachers being rendered surplus. The 2nd respondent, therefore, contends that Ext.P4 has no application to the fact situation obtaining in this writ petition and as such the petitioner cannot claim immunity from transfer on the basis of Ext.P4 in this particular case.

3. The 4th respondent, the other teacher in Mathematics in the School, who would be the person to be transferred, if the petitioner's claim is upheld, has also filed a counter affidavit, in which she also raises the very same contentions.

4. I have considered the rival contention in detail. The fact that the petitioner is the junior-most Mathematics teacher is not disputed. Therefore if on account of reduction in post a teacher has to be retrenched certainly the petitioner is the one to be so retrenched. But that is not the case here. There is no question of retrenchment here but only of transfer to another School. In fact neither the Government pleader nor the 4th respondent's counsel could bring to my attention any provision

in the Kerala Education Act and Rules or any other order which says that whenever teachers are to be transferred on account of reduction in staff strength, the junior-most among the teachers have to be transferred. Therefore, it is not mandatory that whenever there is reduction in staff strength the junior - most teacher has to be transferred. It all depends on the welfare of the students. If the welfare of the students demand that a teacher who is the junior-most has to be retained in the school, the course to be adopted is to transfer the other teacher and not the junior-most.

5. The National Education Policy envisages more importance to the extra-curricular activities of students than before. One of the extra curricular activities recognized by the Kerala Education Rules is junior Red Cross Work, as is evident from Rule 10 of Chapter VIII of the Kerala Education Rules. From the same, it is more than evident that the Government also recognized the importance of such extra-curricular activities like. Junior Red Cross Work to be imparted to the students in the schools in Kerala. It is exactly for the said purpose that Ext.P4 order has been issued granting immunity from transfer to Red Cross Trained teachers.

6. Although the 4th respondent would dispute the eligibility of the petitioner to work as a Red Cross Trainer, the 4th respondent could not satisfy me that the petitioner is ineligible for the same. Exts.P1 and P3, certificates issued by the Junior Red Cross authorities read with Exts.P7, P8 and P9 would go to show that the petitioner has been accepted as a Junior Red Cross Trainer in the Perinadu Government High School.

6. Now the only question to be decided is as to whether the petitioner can claim immunity from transfer on the basis of Ext.P4. The Government has also recognized the importance of these extra curricular activities at least in aided schools by issuing G.O.(P)No.403/2002/G.Edn. Dated 4.12.2002, in which even in the case of sending out teachers on protection on division fall, teachers holding the charge of NCC/Scouts and Guides in the schools are permitted to continue in the same schools under protection even at the expense of senior teachers. NCC/Scouts and Guides are also extra curricular activities mentioned in Rule 10 of Chapter VIII of KER, just like Junior Red Cross Work. Therefore the case of Junior Red Cross trainers among the teachers is also to

be recognized in parity with those of NCC/Scouts and Guides. Of Course Ext.P4 refers only to immunity from transfer. The Government pleader and the counsel for the 4th respondent tried to draw a distinction between ordinary transfer and transfer on being rendered surplus due to reduction of post. Even if there is such a subtle distinction, the fact remains that both are transfers with the same consequences. While interpreting Ext.P4 an interpretation which would advance the object has to be adopted. The object of Ext.P4 is to see that the students of the school are not left without a teacher for training them after the training has started. In this case, the petitioner has sufficiently proved that the training has in fact started. She has also specifically averred in the reply affidavit that fees have been collected from the students towards Red Cross Training. There is no case for either the 2nd respondent or the 4th respondent that there is any other teacher in the school who is Red Cross trained. Therefore in the interest of the students I am inclined to adopt a liberal interpretation to Ext.P4 to mean all kinds of transfers, failing which the students would be put to prejudice. The very object of Kerala Education Act and Rules is to promote the welfare of

the students and not merely to protect a teacher from transfer on the ground that he is senior-most. Here the teacher is not put to prejudice because of this transfer. Even otherwise she is liable to be transferred since transfer is an incidence of Government service. That being so, I am of opinion that the petitioner should be given the benefit of Ext.P4 in the interest of the students whom the petitioner is imparting training in Junior Red Cross. It is also stated by the petitioner that this training involves a course of three years and that is why Ext.P4 speaks about immunity from transfer for a minimum period of three years. This is also clear from Ext.P2 circular.

7. In this connection I also note the contention of the petitioner about the attempt of the 4th respondent, while she was the teacher-in-charge, to make it appear that there was no Red Cross Unit in the Perinadu School, which has been thwarted by the timely intervention of the District Collector, in order to avoid her transfer. In view of the view I have already taken it is not necessary to go into that contention in detail.

8. In the above circumstances, I quash Ext.P10 to the extent it transfers the petitioner to Government High School, Chithara. There would be a direction to the 2nd respondent to

retain the petitioner at Government High School, Perinadu
giving her benefit of Ext.P4 Government Order.

The writ petition is allowed as above.

S. SIRI JAGAN, JUDGE

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